

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Dennis E. Murphree

Plaintiff,

v.

Ned A. Godshall

Defendant.

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Civil Action No. 4:13-cv-00453

**MURPHREE'S SECOND MOTION TO DISMISS PURSUANT TO RULE 12(b)(6) AND
RULE 9(b)**

Pursuant to Federal Rules of Civil procedure 12(b)(6) and 9(b), Plaintiff Dennis Murphree moves the Court to dismiss the claims stated against him by Defendant Ned Godshall.

Murphree's motion is well-founded for three reasons. First, the Amended Counterclaim fails to plead facts sufficient to state a claim upon which relief may be granted. The claim for fraudulent inducement fails because the Amended Counterclaim does not establish that the alleged statements about the future of the fund were made recklessly or that Murphree knew they were false when he made them. Second, the fraudulent inducement claim also fails because it lacks the particularity required under rule 9(b). Finally, all of the claims alleged are time-barred or untimely on the face of the Amended Counterclaim.

In support of this Motion, Murphree separately files his Memorandum Supporting His Second Motion to Dismiss pursuant to Rule (12(b)(6) and Rule 9(b).

Respectfully submitted,

/s/ Charlie R. Parker

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Certificate of Service

I hereby certify that on February 14, 2014 a copy of the foregoing was served, via ECF, on counsel for defendant as follows:

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/s/ Anna Rotman

Anna Rotman